

Hunter & Mow, P.C.

A Professional Corporation of Attorneys at Law

1620 I Street, N.W.
Suite 701
Washington, D.C. 20006
(202) 293-2500

Writer's Direct Dial Number

(202) 293-2588

DOCKET FILE COPY ORIGINAL

Facsimile: (202) 293-2571

March 26, 1996

BY HAND DELIVERY

William F. Caton, Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

RECEIVED

MAR 26 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

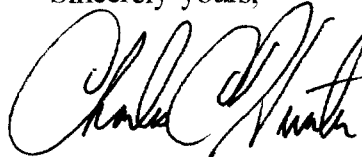
**Re: Erratum to Reply Comments of
The Telecommunications Resellers Association
CC Docket No. 96-21**

Dear Mr. Caton:

Enclosed herewith are an original and 11 copies of the "Summary" portion of the Reply Comments of the Telecommunications Resellers Association ("TRA"); this material was inadvertently omitted from TRA's submission filed with the Commission in the above-referenced docket on March 25, 1996. Please associate these pages with TRA's Reply Comments of that date.

If you have any questions concerning this matter, please do not hesitate to contact the undersigned.

Sincerely yours,



Charles C. Hunter

Enclosures

No. of Copies rec'd
List ABCDE

0211

SUMMARY

The Telecommunications Resellers Association ("TRA"), an organization consisting of more than 450 resale interexchange and other carriers and their underlying service and product suppliers, hereby reaffirms its position that neither the RBOCs nor their out-of-region long distance services affiliates should be declared non-dominant unless and until the RBOCs' local exchange/exchange access "bottlenecks" have been dismantled and competitive local telephone service offerings are generally available. Nevertheless, in the event that the Commission ultimately decides to regulate RBOC provision of out-of-region long distance services as non-dominant, TRA endorses once again the Notice's proposal to reserve such relaxed regulation to structurally-separate RBOC affiliates that, at a minimum, satisfy the Commission's Competitive Carrier separation requirements. TRA, however, reiterates its recommendation that the Commission strengthen these separation requirements to ensure that the separation between the RBOCs and their respective out-of-region long distance service affiliates is meaningful.

For the most part, the Regional Bell Operating Companies take a very different view. The RBOCs argue that (i) as new entrants into a competitive market already populated with hundreds of providers, they must, under the criteria generally applied by the Commission in distinguishing between dominant and non-dominant carriers, be afforded non-dominant treatment in their provision of out-of-region long distance services irrespective of the vehicle through which such services are provided; (ii) as price cap-regulated carriers who are limited to providing out-of-region long distance services, they will have neither the incentive nor the ability to utilize their local exchange/exchange access operations to disadvantage rival providers of interstate, interexchange telecommunications services; and (iii) the Notice's proposal to limit non-dominant

classification to structurally-separate RBOC out-of-region long distance affiliates is inconsistent with the Telecommunications Act of 1996.

With respect to the RBOCs' first point, the central analysis in applying the Commission's dominant/non-dominant dichotomy has been, and should remain, the extent to which an LEC can leverage its near-monopoly control of local exchange "bottlenecks" to disadvantage competitors in the interstate, interexchange telecommunications services market. As TRA emphasized in its Comments, this "bottleneck" control would provide the RBOCs with the ability to act anticompetitively to disadvantage competing IXC's, even if they were to act through structurally-separate affiliates and were to provide only out-of-region long distance services. Moreover, it matters not whether the anticompetitive conduct takes the form of discriminatory access or other strategic price or service manipulation or misallocation of costs between competitive and monopoly activities or other forms of cross-subsidization, the result would be the same -- competition in the interexchange telecommunications services market would be adversely impacted -- and it is the smaller carriers that comprise the rank and file of TRA's membership that would be most directly impacted and the most seriously harmed.

As to the RBOCs' second point, for so long as the RBOCs are subject to any form of "sharing requirement," they will have the same incentives they have always had to misallocate costs from, or otherwise engage in cross-subsidization between, price cap-regulated and non-price cap-regulated activities. Even in the absence of such a sharing requirement, however, incentives to shift costs exist; inflated earnings associated with monopoly activities invite enhanced regulatory scrutiny which could dampen future profits. Compelling evidence of price cap regulation's failure to eliminate all incentives to engage in cross-subsidization is the RBOCs' continued reliance -- revealed in recent regulatory audits of RBOC operations -- upon such tactics.

Neither does limiting RBOC provision of interstate, interexchange telecommunications services to out-of-region long distance services eliminate opportunities for the RBOCs to disadvantage rival IXCs through strategic manipulation of access rates and services within their respective local exchange/exchange access service areas. As TRA and others explained in their comments, an RBOC could (i) damage a competing IXC's reputation in the national market with national customers by impairing the IXC's service quality within the RBOC's service area, (ii) use its position in the local services market to prefer or punish national customers to encourage them to take out-of-region long distance services from it through, for example, preferential pricing, provisioning or service options, or (iii) discriminate in favor of its out-of-region long distance services affiliate in the provision of terminating access or database services or in access to information.

With respect to the RBOC's final point, the '96 Act was intended to preserve, promote and facilitate the growth of competition in telecommunications product and service markets, not to provide the RBOCs with a license to extend or leverage existing market power. Obviously, the Congress did not intend to afford the RBOCs an opportunity to undermine competition in the interstate, interexchange telecommunications services market during the lag in time between the removal of legal and practical barriers to local exchange/exchange access competition and the emergence of such competition. Accordingly, the Notice's proposed regulatory treatment of RBOC provision of out-of-region long distance services is not only not inconsistent with the Telecommunications Act of 1996's pro-competitive theme, but, if anything, affords the RBOCs premature regulatory relief.

In addition to the enhanced separations proposed in its Comments, TRA endorses several additional separations requirements suggested by other commenters. TRA agrees

with other commenters that (i) strict limitations should be put on joint marketing (including bundling) of local exchange/exchange access services and out-of-region long distance services, (ii) the limitations imposed on the joint ownership and/or sharing of transmission and switching facilities should be extended to databases and other facilities used for call routing/verification purposes, (iii) the requirement that RBOC out-of-region long distance services affiliates obtain exchange/exchange access services under tariff should be expanded to provide that all transactions between such affiliates and their respective RBOCs should be "arm's length" arrangements which are made available to competitors on the same terms, and (iv) the Commission should carefully scrutinize RBOC arrangements which could involve coordination in the marketing/provision of local exchange/exchange access and out-of-region long distances.